

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[AZ 68-0011; FRL - ]

Approval and Promulgation of State Implementation Plans;

Arizona — Maricopa County Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action approving a State Implementation Plan (SIP) revision submitted by the State of Arizona on April 29, 1997, establishing a summertime gasoline Reid Vapor Pressure (RVP) limit of 7.0 pounds per square inch (psi) for gasoline distributed in the Maricopa County (Phoenix) ozone nonattainment area. Arizona has lowered the summertime RVP limit for this area to reduce emissions of volatile organic compounds (VOC) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA). Arizona's fuel requirement is not preempted by federal fuels requirements because EPA is finding that the control measure is necessary for the Maricopa area to attain the national ambient air quality standards (NAAQS) for ozone and is approving the measure into the Arizona SIP.

DATES: This direct final rule is effective on [Insert date 60 days from date of publication in the Federal Register], unless EPA receives adverse or critical comments by [Insert date 30 days from date of publication in the Federal Register]. If such comments are received, EPA will withdraw this direct final rule and publish a timely notice in the Federal Register.

ADDRESSES: Written comments should be sent to the Region IX contact listed below. Copies of the SIP revision are available in the docket (#AZ-RVP-97) for this rulemaking, which is open for public inspection at the addresses below. A copy of this notice is also available on EPA, Region IX's website at <http://www.epa.gov/region09>.

Air Planning Office (AIR-2), Air Division, Region IX, U.S. Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105

Arizona Department of Environmental Quality, Office of Outreach and Information, First Floor, 3033 N. Central Avenue, Phoenix Arizona 85012

FOR FURTHER INFORMATION CONTACT: Roxanne Johnson, Air Planning Office, AIR-2, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744-1225.

SUPPLEMENTAL INFORMATION:

I. Reid Vapor Pressure

Reid Vapor Pressure (RVP) is a measure of a gasoline's volatility and is a measurement of the rate at which

gasoline evaporates and emits VOC; the lower the RVP, the lower the rate of evaporation. The RVP of gasoline can be lowered by reducing the amount of its volatile components, such as butane. Lowering RVP in the summer months can offset the effect of summer temperature upon the volatility of gasoline, which, in turn, lowers emissions of VOC. However, because VOC is a necessary component in the production of ground level ozone in hot summer months, reduction of RVP will help ozone nonattainment areas like the Maricopa (Phoenix), Arizona, area attain the NAAQS for ozone<sup>1</sup> and thereby produce benefits for human health and the environment.

The primary emission benefits from low RVP gasoline come from reductions in evaporative emissions; exhaust emission reductions are very small or nonexistent. Because oxides of nitrogen (NO<sub>x</sub>) are a product of combustion, they will not be found in evaporative emissions, and low RVP gasoline will have little or no effect on NO<sub>x</sub>.

## II. State Submittal

Section 13 of Arizona House Bill (H.B.) 2001 (1993 Special Session), originally codified in Arizona Revised Statutes (ARS) at section 41-2083(E)<sup>2</sup>, was passed by the Arizona legislature on November 12, 1993. This provision limits the maximum summer vapor pressure (or Reid vapor pressure) of gasoline fuel sold in the Maricopa area to 7.0 psi beginning May 31, 1995 through September 30, 1995, and will continue to apply from May 31 through September 30 of each year thereafter. Gasoline distributed in the Maricopa area by refineries, importers, carriers, retail stations and other end users who sell or dispense gasoline must meet the 7.0 psi limit during those periods. The State of Arizona submitted section 13 of H.B. 2001 to EPA as a SIP revision on April 29, 1997.

## III. Clean Air Act Requirements

In determining the approvability of a SIP revision, EPA must evaluate the proposed revision for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 Code of Federal Regulations (CFR) part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

For SIP revisions addressing fuel measures, an additional statutory requirement applies. CAA Section 211(c)(4)(A) prohibits state regulation of a fuel characteristic or component for which EPA has adopted a control or prohibition, unless the state control is identical to the federal control. Section 211(c)(4)(C) provides an exception to this preemption if the measure is approved in a SIP. EPA can approve such a SIP provision if it finds that the control or prohibition is necessary to achieve a NAAQS. EPA can make this finding if no other measures exist that would bring about timely attainment or if other measures exist and are technically possible to implement, but are unreasonable or impracticable. See section 211(c)(4)(C). The requirements of section 211(c)(4) are discussed in further detail below.

## IV. EPA Evaluation

### A. General SIP Requirements

As discussed below, EPA has evaluated the submitted SIP revision and has determined that it is consistent with the requirements of the CAA and EPA regulations. On May 8, 1997, EPA found that the April 29, 1997 SIP revision conformed to EPA's completeness criteria in 40 CFR part 51, Appendix V.

The SIP submittal contains: ARS 41-2083(E) (now section (F)) as established in Section 13 of 1993 Special Session House Bill 2001; documentation of the public notice and hearing regarding the SIP revision, dated March 17, 1994; evidence of State legal authority; and VOC air quality modeling. Additional supporting information regarding enforcement and compliance assurance for the SIP revision can be found in the ARS (specifically in Chapter 15, Department of Weights and Measures, of title 41) and the Arizona Administrative Code (ARC).

Arizona Department of Weights and Measures implements the RVP limit and has the necessary authority under the ARS and ARC to obtain samples (ARS 41-2066(A)), test (ARS 41-2083(c) and ARC R20-2-720), prohibit the sale of non-conforming gasoline (ARS 41-2066(A)(2) and ARC R20-2-110), and to impose civil penalties on any person who violates the fuel requirements of any provision of ARS 41-2083 (ARS 41-2115(a)). EPA has concluded that these provisions confer on the State the requisite authority to enforce compliance with the 7 psi RVP limit.

#### **B. Section 211(c)(4)**

##### **1. Federal Preemption**

CAA section 211(c)(4)(A) preempts certain state fuel regulations by prohibiting a state from prescribing or attempting to enforce any control or prohibition on any characteristic or component of a fuel or fuel additive for the purposes of motor vehicle emission control if the Administrator has prescribed under section 211(c)(1) a control or prohibition applicable to such characteristic or component of the fuel or fuel additive, unless the state prohibition is identical to the prohibition or control prescribed by the Administrator.

EPA first proposed to regulate summertime gasoline RVP in 1987 (52 FR 31274). EPA's gasoline RVP proposal resulted in a two-phased final regulation that Congress incorporated into the CAA at section 211(h). Phase I of the regulation took effect in 1990 (54 FR 11868) for the years 1990 and 1991. Phase II of the regulation became effective in 1992 (55 FR 23658). These regulations are found in 40 CFR §80.27. Under the regulations, the continental United States is divided into two control regions, Class B and Class C. Generally speaking, the Class B states are the warmer southern and western states, and Class C states are the cooler northern states. The Phase II regulation limits the volatility of gasoline sold during the high ozone season to 9.0 psi RVP for Class C areas and 7.8 psi RVP for Class B ozone nonattainment areas. Arizona is a Class B state and is therefore required under the federal rule to meet the 7.8 psi RVP standard.

Arizona has recently requested to opt into EPA's reformulated gasoline program (RFG). Should that opt in be approved as has been proposed, then the applicable federal standard for RVP in the Maricopa ozone nonattainment area

would be dictated by the requirements of the RFG program. Like the RVP rule, the RFG regulation also divides the continental United States into two control regions: Region 1 and Region 2. The Maricopa area is in Region 1 and would be subject to a maximum RVP limitation of 7.2 psi under the federal RFG program. See 40 CFR §80.41.

Because Arizona's fuel requirement for the Maricopa nonattainment area limiting summertime RVP to 7.0 psi is not identical to the federal fuel standards applicable to the fuel characteristic RVP (i.e., federal phase II volatility limit of 7.8 psi or federal phase I RFG RVP limit of 7.2 psi), Arizona's requirement is preempted unless it is in the Arizona SIP.

## 2. Finding of Necessity

Section 211(c)(4)(C) allows a state to prescribe and enforce controls or prohibitions on the use of a fuel or fuel additive for the purposes of motor vehicle emission control if the control or prohibition is contained in the applicable SIP. Section 211(c)(4)(C) states that the Administrator may approve such provisions in a SIP:

if [s]he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements. The Administrator may find that a state control or prohibition is necessary to achieve that standard if no other measures that would bring about timely attainment exist, or if other measures exist and are technically possible to implement, but are unreasonable or impracticable. The Administrator may make a finding of necessity under this subparagraph even if the plan for the area does not contain an approved demonstration of timely attainment.

Thus, to implement a state low RVP requirement, a state must submit a SIP revision adopting the state fuel control and must include specific information showing the measure is necessary to meet the ozone NAAQS, based on the statutory specifications for showing necessity.

The State, the Maricopa County air pollution control agency, and the local jurisdictions in Maricopa County have adopted and implemented a broad range of ozone control measures including the summertime low RVP limit of 7.0 psi, an enhanced inspection and maintenance (I/M) program, stage II vapor recovery, an employer trip reduction program, many transportation control measures, and numerous stationary and area VOC controls. See the MAG 1993 Ozone Plan and Addendum, Maricopa Association of Governments, March 1994.

The State has also recently adopted additional ozone control measures and undertaken additional planning efforts. In January of this year, the State requested that the Maricopa nonattainment area be included in EPA's reformulated gasoline (RFG) program to help avoid any ozone NAAQS exceedances.<sup>3</sup> Legislation passed in the 1997 session included adoption of California's off-road engine standards, a state reformulated gasoline program,<sup>4</sup> and new standards for industrial cleaning solvents. Finally, the Arizona Department of Environmental Quality (ADEQ) has developed a Voluntary Early Ozone Plan (VEOP) including air quality modeling and additional control measures beyond those included in the legislation.

The State's RVP SIP submittal includes the Urban Airshed Model (UAM) modeling demonstration from the draft VEOP. See Exhibit 6, Appendix B of the SIP submittal. The modeling used 1996 as the base year and evaluated the effects of existing and future control measures. Arizona's low RVP requirement is built into the 1996 base year inventory and modeled out to the 1999<sup>5</sup> and 2010 projected attainment years.

In addition to a low RVP requirement, Arizona evaluated all reasonable and practicable additional control measures that could be implemented in the Maricopa area. The fifteen control measures that were evaluated for 1999 are: 1) purge test in I/M (evaluated for 2010); 2) final I/M cutpoints; 3) I/M testing of constant 4-by-4 vehicles; 4) federal RFG (both Phase I and Phase II RFG at 7.2 psi RVP; 5) adoption of California standards for off-road mobile sources; 6) voluntary catalyst replacement program; 7) voluntary vehicle retirement program; 8) voluntary commercial lawn mower replacement; 9) new standards for the use of industrial cleaning solvents; 10) alternative fuels tax incentives; 11) Motor Vehicle Division registration enforcement and mandatory insurance; 12) pollution prevention; 13) temporary power at construction sites; 14) alternative-fueled buses; and 15) traffic light synchronization. See Exhibit 5 of the SIP submittal.

Results from the VOC modeling demonstration showed that, using 7.0 psi RVP gasoline plus all other measures identified including federal RFG, the Maricopa area still fails to attain the 12.0 ppm ozone NAAQS in 1999.<sup>6</sup> See Exhibit 5 of the SIP submittal. Given this result, it is clear that the State's low RVP requirement is a necessary component of the strategy to achieve timely attainment of the ozone strategy in the Maricopa area and that there are no other measures that are reasonable and practicable that would bring about timely attainment.

### C. Adjustment of the RVP Lower Limit in the Federal Reformulated Gas Program

The federal RFG program includes standards for the RVP of gasoline. The maximum RVP of RFG is controlled primarily because of the increased VOC emissions that result from gasoline with higher RVP levels.

In addition, the minimum RVP standard addresses vehicle driveability problems, such as poor starting and running, that can occur when low volatility gasoline does not vaporize in the vehicle engine. As a result, under 40 CFR 80.42(c)(1), the nationwide summertime minimum RVP allowed for RFG is 6.6 psi, although under 40 CFR 80.45(f)(1) this minimum RVP standard changes to 6.4 psi beginning in 1998.

Arizona has requested that EPA approve a SIP revision setting a maximum summertime volatility standard for the Maricopa area of 7.0 psi. As a result of today's approval of this SIP revision as well as Arizona's opt-in to federal RFG, refiners supplying RFG for the Maricopa area for use during the summer will have to meet an RVP standard of 6.6 psi minimum (a federal standard) and 7.0 psi maximum (the State imposed standard). At the March 18, 1997, public hearing and in subsequent comments to the Agency regarding the Maricopa area opt-in, various refiners suggested that this narrow RVP range would create gasoline production problems because of testing variability, but that this problem would be

resolved if the RVP minimum standard were 6.4 psi. In addition, the American Automobile Manufacturers Association has indicated in a letter to EPA, dated April 4, 1997, that a summertime minimum RVP of 6.4 psi for use in the Maricopa area would not create vehicle performance problems. (See docket AZ-RVP-97.)

For these reasons, EPA believes it is appropriate to allow a minimum RVP of 6.4 psi for VOC-controlled RFG in the Maricopa area. As a result, EPA will forego enforcement of the 6.6 psi minimum RVP standard under section 80.42(c)(1) for VOC-controlled RFG used in the Maricopa area, including RFG produced for the Maricopa market that is used in non-RFG areas around Maricopa, provided the following conditions are met.

- (1) RFG must meet a minimum RVP standard of 6.4 psi during the period May 1 through October 31.
- (2) All other RFG must meet a minimum RVP standard of 6.6 psi.
- (3) The refiner or importer must specify in the product transfer documents, required in section 80.77, the VOC-controlled RFG is for use only in the Maricopa covered area.

Enforcement of the RFG requirements in this manner will expire on January 1, 1998. (See EPA letter dated, April 18, 1997, to Urvan Sternfels, President, National Petroleum Refiners Association from Steven A. Herman, Assistant Administrator).

#### D. Conclusion

EPA has evaluated the submitted SIP revision and has determined that it is consistent with the CAA and EPA regulations. EPA has also found that Arizona's 7 psi RVP limit is necessary for attainment in the Maricopa ozone nonattainment area, as required by section 211(c)(4)(C) for approval into the SIP. Therefore, Arizona's requirement to limit summertime low RVP gasoline is being approved into the Arizona SIP under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

EPA is publishing this document without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this Federal Register publication, EPA is proposing to approve the SIP revision should adverse or critical comments be filed. This action will be effective [Insert date 60 days from date of publication in the Federal Register], unless, within 30 days of its publication, adverse or critical comments are received.

If the EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a

subsequent final rule based on this action serving as a proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective [Insert date 60 days from date of publication in the Federal Register].

#### IV. Administrative Requirements

##### A. Executive Order 12866

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

##### B. Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 et seq., EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

This federal action authorizes and approves requirements previously adopted by the State, and imposes no new requirements. Therefore, because this action does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. Union Electric Co. v. U.S. EPA, 427 U.S. 246, 255-66 (1976); 42 U.S.C. 7410(a)(2).

##### C. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 (“Unfunded Mandates Act”), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in expenditures to State, local, and tribal governments in the aggregate, or to the private sector, of \$100 million or more in any one year. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this approval action does not include a Federal mandate that may result in expenditures of \$100 million or more to either State, local, and tribal governments in the aggregate, or to the private sector in any one year. This Federal action authorizes and approves requirements previously adopted by the State, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, will result from this action.

#### D. Submission to Congress and the General Accounting Office

Under section 801(a)(1)(A) of the Administrative Procedure Act (APA) as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of the rule in today's Federal Register. This rule is not a "major rule" as defined by section 804(2) of the APA as amended.

#### E. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [FEDERAL REGISTER OFFICE: insert date 60 days from date of publication of this document in the Federal Register]. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and it will not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52:

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Volatile organic compounds.

Note: Incorporation by reference of the State Implementation Plan for the State of Arizona was approved by the Director of the Federal Register on July 1, 1982.

Date

Felicia Marcus  
Regional Administrator



For the reasons stated in the preamble, part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52 [AMENDED]

Subpart D - Arizona

1. The authority citation for part 52 continues to read as follows:

AUTHORITY: 42 U.S.C. 7401-7671q.

2. Section 52.120 is amended by adding paragraph (c)(87) to read as follows:

Section 52.120 Identification of plan.

\* \* \* \* \*

(c) \* \* \*

(87) New and amended fuel regulations for the following Arizona Department of Environmental Quality plan revisions were submitted on April 29, 1997, by the Governor's designee.

(i) Incorporation by reference.

(A) Arizona Revised Statutes.

(1) Section 13 of H.B, 2001 (A.R.S. § 41-2083(E)), adopted on November 12, 1993.

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<sup>1</sup> The Maricopa area is classified as a "moderate" ozone nonattainment area under the CAA. 40 CFR 81.303.

<sup>2</sup> This section is currently codified in the ARS as section 41-2083(F).

<sup>3</sup> <sup>3</sup> By letter dated January 17, 1997, Governor Symington of the State of Arizona applied to EPA to include the Maricopa County moderate ozone nonattainment area in the federal RFG program. Pursuant to the Governor's letter and section 211(k)(6) of the CAA, EPA proposed an effective date for the federal RFG program of June 1, 1997 or 30 days after the publication of the final notice, whichever was later. See 62 FR 7179 (February 18, 1997).

<sup>4</sup> The State RFG program for the Maricopa area has two phases. By June 1, 1998, gasoline sold must meet standards similar to EPA's Phase I

RFG program or California's Phase II RFG program. Starting May 1, 1999, gasoline must meet standards similar to EPA's Phase II RFG program or California's Phase II RFG program.

<sup>5</sup> 1999 was chosen as the modeling year because it is the next ozone attainment date in the Clean Air Act after 1996. See CAA 181(a)(1).

<sup>6</sup> The State is continuing to evaluate the results of the UAM modeling in the VEOP. See "Status Report on the Metropolitan Phoenix Voluntary Early Ozone Plan," April 1997. This continuing evaluation may change some of the modeling results, such as the effect of NOx controls on ozone concentrations. Given the continued exceedances of the ozone standard in the Maricopa area and the area's rapid rate of growth, it is very unlikely that revised modeling would show that implementation of all identified control measures, including the 7 psi RVP limitation, will reduce emissions more than is necessary for timely attainment.